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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,487

07/22/2008

David Dinauer

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EXAMINER

CHUNDURU, SURYAPRABHA

ART UNIT

PAPER NUMBER

1637

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,487	<b>Applicant(s)</b> DINAUER ET AL.	
	<b>Examiner</b> Suryaprabha Chunduru	<b>Art Unit</b> 1637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Applicant's election without traverse of Group I (claims 1-14, and 18-19) in the reply filed on February 22, 2010 is acknowledged.

***Status***

2. Claims 1-14, and 18-19 are considered for examination. Claims 15-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group. This is made FINAL.

***Priority***

3. This application filed on July 22, 2008 is a 371 of PCT/US2004/007925 filed on March 15, 2004 which claims benefit of 60/513,307 filed on 10/22/2003.

***Objection to the specification***

4. The disclosure is objected to the following informalities:

(i) The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code (see at least page 6 and 19). Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

(ii) This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply the requirements of 37 CFR 1.821 through 1.825.

The instant application recites sequences that are not identified by SEQ ID No. (see at least page 23, table 2 ) recite a nucleic acid sequence / amino acid sequence with more than 10 nucleotides or 4 amino acids, which is not identified by SEQ ID NO.). Examiner also notes that

the application contains no sequence listing either in the form of a paper copy or in a computer readable form. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Shilling et al. (J Immun., Vol. 168, pp. 2305-2315, 2002).

Shilling et al. teach a primer set of claims 1-7, 11, for identifying KIR allele comprising one or more primer pairs to produce an amplicon that is less than or 1000 bases in length from a nucleic acid that encodes intra-exon portion or an extracellular portion of KIR (see page 2310, col. 1, paragraph 1-2, page 2309, Fig. 1, page 2311, Fig. 2 indicating intra-exon portion and extracellular portion of KIR).

With regard to claims 8-10, 13-14, Shilling et al. also teach said amplicon length ranges from less than 1000 to greater than 2000 bases (see page 2309, Fig. 1).

With regard to claim 12, Shilling et al. teach that the intra-exon or extracellular portion of the KIR receptor is encoded by any one of the KIR exons 1-8 (see page 2311, Fig. 2 indicating exons 3-5, and 9). Accordingly the claims are anticipated.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shilling et al. (J Immun., Vol. 168, pp. 2305-2315, 2002) in view of Stratagene Catalog (Stratagene Catalog, p. 39, 1988).

Shilling et al. teach one or more primer sets for identifying KIR alleles as discussed above in section 5.

However Shilling et al. did not teach a kit comprising said KIR primers.

Stratagene Catalog teaches a kit for gene characterization wherein the kit comprises different reagents assembled and pre-mixed specifically for a defined set of experiments (see pages 39, column 1, paragraph 1).

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art at the time the invention was made, to modify a composition of KIR primer set as taught by Shilling et al., with a kit as taught by Stratagene Catalog to achieve expected advantage of developing a ready to use kit format as taught by Stratagene Catalog because Stratagene Catalog taught assembling gene characterizing components in premixed kit format for the advantage of reducing the use of more expensive reagents and for cost-effective purposes (see page 39, column 1, paragraph 1). Therefore an ordinary practitioner would have been motivated to combine the said mixture of primers into a kit format as taught by the Stratagene Catalog which would result in a ready to use kit because a kit format reduces cost and consumption of expensive products.

### ***Conclusion***

No claims are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suryaprabha Chunduru whose telephone number is 571-272-0783. The examiner can normally be reached on 8.30A.M. - 4.30P.M, Mon - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Suryaprabha Chunduru/

Primary Examiner, Art Unit 1637